

Message Text

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C O N F I D E N T I A L CANBERRA 6245

EO 11652: GDS

TAGS: PINT, AS

SUBJ: ATTORNEY-GENERAL RESIGNS FROM FRASER CABINET

1. SUMMARY: ROBERT J. ELLICOTT RESIGNED AS ATTORNEY-GENERAL ON SEPTEMBER 6. HE WAS REPLACED BY SENATOR PETER DURACK, FORMER MINISTER FOR VETERANS' AFFAIRS. VICTOR GARLAND, WHO WAS BRIEFLY IN THE GOVERNMENT IN 1975-76, WAS RENAMED TO THE CABINET AS THE NEW MINISTER FOR VETERANS' AFFAIRS. END SUMMARY.

2. ELLICOTT'S RESIGNATION FROM THE FEDERAL CABINET STEMMED FROM THE CABINET'S DECISION THAT THE COMMONWEALTH SHOULD TAKE OVER AND THEN ABANDON A PRIVATE PROSECUTION AGAINST OPPOSITION LEADER GOUGH WHITLAM, HIGH COURT JUSTICE LIONEL MURPHY, FORMER DEPUTY PRIME MINISTER JIM CAIRNS, AND FORMER MINING MINISTER REX CONNOR (DECEASED). THE PRIVATE ACTION FOR CRIMINAL CONSPIRACY WAS INITIATED BY A SYDNEY LAWYER IN NOVEMBER 1975. THE ACTION ALLEGED THAT WHITLAM, CAIRNS, CONNOR AND MURPHY, WHEN THEY WERE IN GOVERNMENT, CONSPIRED TO DECEIVE THE GOVERNOR-GENERAL SIR JOHN KERR BY RECOM-
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MENDING THAT HE APPROVE AN ILLEGAL \$4 BILLION OVERSEAS LOAN (THE KHEMLANI AFFAIR). ELLICOTT CLAIMED THAT THE CABINET HAD DENIED HIM ACCESS TO THE WITNESSES AND DOCUMENTS NECESSARY TO CONTINUE ACTION AGAINST THE FOUR.

3. THE CABINET TOOK ITS DECISION BECAUSE THERE IS A LONG-STANDING CONVENTION OF PRIVILEGE SURROUNDING GOVERNMENT

ACTIVITIES. THE CABINET REFUSED TO SET A PRECEDENT BY MAKING SECRET DOCUMENTS AVAILABLE IN THIS CASE, WHICH WAS INITIATED BY A PRIVATE INDIVIDUAL, BECAUSE OF ITS POTENTIAL IMPLICATIONS FOR OTHER, PERHAPS DANGEROUS OR CONTROVERSIAL, ISSUES FACING THE GOVERNMENT. THE CABINET ALSO DECIDED TO TAKE OVER AND THEN DROP THIS PRIVATE ACTION BECAUSE OF ANOTHER LONG-STANDING CONVENTION THAT MINISTERS OF PREVIOUS GOVERNMENTS SHOULD NOT BE TAKEN TO COURT OVER ACTIONS WHICH WERE SUBSEQUENTLY CALLED AS ILLEGAL, WHICH THEY TOOK WHILE IN OFFICE.

4. ACCORDING TO PARLIAMENTARY SOURCES, ELLICOTT RESIGNED BECAUSE HE WAS NOT ABLE TO ACCEPT THE CABINET'S DECISION, WHICH WOULD HAVE PROSCRIBED HIS ABSOLUTE DETERMINATION TO PURSUE THE FOUR FORMER LABOR MINISTERS FOR WHAT HE PUBLICLY STATED WAS "AN ILLEGAL AND UNCONSTITUTIONAL ACT."

5. SENATOR PETER DURACK, LIBERAL, WESTERN AUSTRALIA, A RESPECTED BARRISTER AND FORMER RHODES SCHOLAR, HAS BEEN NAMED ATTORNEY-GENERAL. VIC GARLAND, WHO WAS FORCED TO RESIGN AS POST AND TELECOMMUNICATIONS MINISTER LESS THAN TWO MONTHS AFTER THE COALITION GOVERNMENT CAME TO POWER BECAUSE OF HIS ALLEGED INVOLVEMENT IN AN ELECTION BRIBERY SCANDAL (SEE 76 CANBERRA 959) REPLACED DURACK AS MINISTER FOR VETERANS' AFFAIRS.

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6. COMMENT: THE POLITICAL EFFECTS OF ELLICOTT'S RESIGNATION ON THE GOVERNMENT SHOULD BE FAIRLY MINOR, ALTHOUGH ELLICOTT IS A POPULAR FIGURE IN THE N.S.W. BRANCH OF THE LIBERAL PARTY. WHITLAM AND COMPANY ARE OF COURSE DELIGHTED TO BE OFF THE HOOK AND ARE NOT IN A POSITION TO MAKE POLITICAL CAPITAL OUT OF THIS ISSUE BECAUSE IT IS NOT IN THEIR INTEREST TO RESURRECT THE KHEMLANI AFFAIR. SOME GOVERNMENT BACKBENCHERS HAVE COMPLAINED THAT ELLICOTT'S "FORCED" RESIGNATION WAS YET ANOTHER EXAMPLE OF FRASER'S "DICTATORIAL" CONTROL OVER THE COALITION GOVERNMENT. HOWEVER, THE MAJORITY VIEW IS THAT FRASER'S ACTION WAS BROUGHT ABOUT BY ELLICOTT'S OVER-ZEALOUSNESS AND BY HIS LACK OF UNDERSTANDING OF POLITICAL REALITIES.
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